Electro-Mechanical Industries, Inc. *and* International Brotherhood of Electrical Workers, Local Union No. 292, AFL-CIO. Case 18-CA-7390

April 27, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

Upon a charge filed on August 21, 1981, by International Brotherhood of Electrical Workers, Local Union No. 292, AFL-CIO, and duly served on Respondent Electro-Mechanical Industries, Inc., the General Counsel of the National Labor Relations Board, by the Regional Director for Region 18, issued a complaint and notice of hearing on September 28, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1), 8(d), and 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that commencing in or about March 1981, Respondent has unilaterally implemented changes with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment by failing and refusing to deduct and remit employees' dues to the Union and since on or about July 1, 1981, by failing and refusing to implement wage increases, as required by the collective-bargaining agreement in force and effect between Respondent and the Union. Respondent failed to file a timely answer to the complaint.

On December 8, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. On December 11, 1981, the Regional Director for Region 18 received one copy of Respondent's answer to the complaint, wherein Respondent admitted in part and denied in part the allegations of the complaint.[1] On December 16, 1981, counsel for the General Counsel filed a motion to strike Respondent's answer and to grant his Motion for Summary Judgment. Subsequently, on January 7, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause or to the motion to strike its answer, and, therefore, the allegations in the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Rule 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent herein specifically states that unless an answer to the complaint is filed within 10 days of service thereof "all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board." As noted above, Respondent failed to file a timely answer to the complaint and has further failed to file a response to the Notice To Show Cause. According to the Motion for Summary Judgment, on October 29, 1981, counsel for the General Counsel sent a letter by ordinary mail to Respondent. The letter advised Respondent that the Board had not yet received an answer to the complaint herein, and further advised Respondent that unless an answer was filed and received by November 6, 1981, a Motion for Summary Judgment would be filed. On November 18, 1981, counsel for the General Counsel sent a certified letter to Respondent, advising Respondent that the Board had not yet received an answer to the complaint and, after specifically referring to the letter sent on October 29 requesting that an answer be received by November 6, 1981. The letter further advised Respondent that unless an answer was filed and received by November 27, 1981, a Motion for Summary Judgment would be filed. The return receipt was not signed by Re-

[1] Respondent did not indicate that it served a copy of its answer on the other party as required by the Board's Rules and Regulations.

spondent until December 1, 1981. On November 30, 1981, by order, the hearing in this proceeding was postponed indefinitely. Upon receipt of the order postponing hearing indefinitely, Respondent's president, Terry M. Johnson, on December 3, 1981, contacted the Regional Office in the belief that the Union had dropped the case. In conversations with counsel for the General Counsel, Johnson was told that the case was open and that a Motion for Summary Judgment would be filed. Johnson indicated his failure to file an answer was because of his confinement in a hospital early in October 1981 for a period of about a week. In his conversation with the Regional Attorney, Johnson was advised that a Motion for Summary Judgment would be filed, but Johnson was urged to promptly file an answer. Respondent failed to file an answer until December 11, 1981, and then failed to properly serve the answer on all parties to the proceeding. Under these circumstances, we find that Respondent's explanation fails to explain why Respondent filed no answer to the complaint from September 29, 1981, the date it was served with the complaint, until December 11, 3 days after the Motion for Summary Judgment was filed and therefore does not constitute good cause within the meaning of Section 102.20 of the Board's Rules and Regulations for failure to file a timely and proper answer.

Accordingly, under the rule set forth above, no good cause having been shown for the failure to file a timely and proper answer, the allegations of the complaint are deemed admitted and are found to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.[2]

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

At all times material herein, Electro-Mechanical Industries, Inc., a Minnesota corporation, with an office and place of business in Minneapolis, Minnesota, has been engaged in the manufacture and nonretail sale and distribution of electrical switchgear, panel boards, and specialty electrical equipment. During the 12-month period ending June 30, 1981, Respondent, in the course and conduct of its business operations sold and shipped from its Minneapolis, Minnesota, facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Minnesota. During the same period Respondent purchased and received at its Minneapolis, Minnesota, facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Minnesota.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Electrical Workers, Local Union No. 292, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The 8(a)(5) and (1) Violations

1. The unit

The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees employed by Respondent at its Minneapolis, Minnesota facility; excluding office clerical employees, sales employees, guards and supervisors as defined in the Act.

2. The representative status of the Union

At all times material herein, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees in the unit described above, and has been recognized as such by Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period July 1, 1979, to June 30, 1982.

At all times material herein, the Union, by virtue of Section 9(a) of the Act, has been, and is now the exclusive representative of the employees in the unit described above for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

3. The request and refusal to bargain

At all times material herein, and continuing to date, the Union has requested, and is requesting, Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, as the exclusive representative of all the employees in the unit described above. Since in or about March

[2] In view of our determination herein, we find it unnecessary to rule on the General Counsel's motion to strike Respondent's answer.

1981, and continuing to date, Respondent has unilaterally implemented changes with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment: by failing and refusing to deduct and remit employees' dues to the Union, and since on or about July 1, 1981, and continuing to date by failing and refusing to implement wage increases, as required by the collective-bargaining agreement in force and effect between Respondent and the Union.

Accordingly, we find that by the acts and conduct described above since March 1981, and at all times thereafter, Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act, we shall order that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has unilaterally implemented changes with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment by failing and refusing to deduct and remit employees' dues to the Union, and to implement wage increases as required by the collective-bargaining agreement, we shall order that Respondent recognize and deal with the Union as the exclusive bargaining representative of its employees in the appropriate unit, by honoring the agreement entered into by it on July 1, 1979, in all its terms. In so doing Respondent shall deduct and remit employees' dues to the Union and shall implement wage increases, as required by the terms of the collective-bargaining agreement in force at the time Respondent committed the unfair labor practices. We shall also order that Respondent make employees whole for any wages lost as a result of Respondent's refusal to grant wage increases due under the terms of the collective-bargaining agreement, and that the Union be made whole for any dues lost as a result of Respondent's unlawful conduct, with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 136 NLRB 716 (1962).

CONCLUSIONS OF LAW

1. Electro-Mechanical Industries, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local Union No. 292, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees employed by Respondent at its Minneapolis, Minnesota facility; excluding office clerical employees, sales employees, guards and supervisors as defined in the Act.

4. At all times material herein, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees in the unit described above for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing, in or about March 1981, and on or about July 1, 1981, respectively, and at all times thereafter, to bargain collectively with the Union, and by unilaterally failing and refusing to deduct and remit employees' dues to the Union and by unilaterally failing and refusing to implement wage increases as required by the collective-bargaining agreement, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act.

6. By the acts and conduct described above and by each of said acts, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Electro-Mechanical Industries, Inc., Minneapolis, Minnesota, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith with International Brotherhood of Electrical Workers, Local Union No. 292, AFL–CIO, concerning rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees employed by Respondent at its Minneapolis, Minnesota facility; excluding office clerical employees, sales employees, guards and supervisors as defined in the Act.

(b) Refusing to deduct and remit employees' dues to the Union as required by the collective-bargaining agreement in force and effect between Respondent and the Union.

(c) Failing and refusing to implement wage increases as required by said collective-bargaining agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and honor and comply with all terms of the agreement executed by Respondent on July 1, 1979.

(b) As required by the agreement, deduct moneys from the unit employees' wages for dues as authorized by employees and remit same to the Union, and make whole the above-named Union for any moneys that would have been due under the terms of the collective-bargaining agreement, but which were not deducted and remitted to the Union as a result of Respondent's failure to apply the terms of the collective-bargaining agreement, with interest as provided in "The Remedy."

(c) Make whole the unit employees for any loss of wages that would have accrued to them but for Respondent's failure to grant wage increases pursuant to the terms of the collective-bargaining agreement, with interest as provided in "The Remedy."

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to compute the amounts due to the Union and to the employees as required by the collective-bargaining agreement.

(e) Post at its Minneapolis, Minnesota, place of business copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Regional Director for Region 18, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Repondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 18, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Brotherhood of Electrical Workers, Local Union No. 292, AFL–CIO, as the exclusive representative of the employees in the bargaining unit described below:

> All full-time and regular part-time production and maintenance employees employed at our Minneapolis, Minnesota facility; excluding office clerical employees, sales employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to recognize or deal with the above-named Union as the exclusive bargaining representative of the employees in the bargaining unit described above by disre-

garding or refusing to carry out the terms of the collective-bargaining agreement executed by us on July 1, 1979, with said Union.

WE WILL NOT refuse to apply the terms of the collective-bargaining agreement to our employees in the appropriate unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL bargain with International Brotherhood of Electrical Workers, Local No. 292, AFL-CIO, as the exclusive bargaining representative of our employees in the appropriate unit.

WE WILL apply the terms of our collective-bargaining agreement to our employees in the appropriate unit.

WE WILL make whole the employees for any loss of wages they may have suffered by our failure to apply the terms of the collective-bargaining agreement to them, with interest.

WE WILL make whole the above-named Union for any moneys that would have been due it under the terms of the collective-bargaining agreement but which were not deducted and transmitted to the Union as a result of our failure to apply the terms of the collective-bargaining agreement, with interest.

ELECTRO-MECHANICAL INDUSTRIES, INC.